

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-10109
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 3, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FELIPE MARTINEZ RAMIREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:15-CR-22-1

Before HIGGINBOTHAM, PRADO, and HAYNES, Circuit Judges.

PER CURIAM:

Felipe Martinez Ramirez was convicted of one count of producing child pornography and was sentenced to serve 210 months in prison and ten years on supervised release. In the sole issue raised in this appeal, he argues that his sentence is procedurally and substantively unreasonable because U.S.S.G. § 2G2.1 lacks an empirical basis.

As Martinez Ramirez acknowledges, this argument is unavailing under *United States v. Miller*, 665 F.3d 114, 121-22 (5th Cir. 2011), which involved U.S.S.G. § 2G2.2. In *Miller*, we explained that we “will not reject a Guidelines provision as unreasonable or irrational simply because it is not based on

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empirical data and even if it leads to some disparities in sentencing.” 665 F.3d at 121-22. Instead, we follow the logic that “[e]mpirically based or not, the Guidelines remain the Guidelines.” *Id.* at 121. The same logic controls here, and the judgment of the district court is AFFIRMED.

Although the logic of *Miller* is controlling, since it involves a different Guideline than that at issue here, we decline to grant summary disposition. Nonetheless, because Martinez Ramirez is not entitled to relief, there is no need for further briefing. Accordingly, the Government’s motion for summary affirmance and, in the alternative, an extension of time to file its brief, is DENIED.